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April 19, 2016

Jeff S. Jordan  
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DN: cn=CELA Stamp \_ Mary  
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Election Commission,  
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Date: 2016.04.19 11:25:56  
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Re: MUR 7031; Stand For Truth, Inc. Response to Complaint against Children of Israel LLC

Dear Mr. Jordan:

We are writing this letter on behalf of Stand For Truth, Inc. and D. Eric Lycan, in his official capacity as Treasurer (collectively "SFT") in response to the Complaint filed in the above-referenced matter by the Campaign Legal Center, Democracy 21 and Lawrence M. Noble (collectively "Complainants") against Children of Israel LLC and "John Doe, Jane Doe and other persons who created and operated Children of Israel LLC and made contributions to... Stand For Truth in the name of Children of Israel LLC" (collectively "Children of Israel").

SFT must be dismissed from the matter as a respondent because (1) no allegations were made against SFT which, if true, could result in a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), (2) to find that SFT is guilty of a violation solely on the basis that it accepted a contribution from an LLC, with nothing more, would be to impose upon SFT retroactively a new standard not contained in the Act or regulations and without prior notice of the FEC's position, and (3) because SFT did in fact confirm that the contribution is the legitimate contribution of Children of Israel, LLC.

The Commission may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. *See* 11 C.F.R. 111.4(a), (d). SFT is not named as a respondent in the complaint, and there is no allegation of wrongdoing by SFT. The Complaint fails on its face to state even a "worst case" legal theory under which SFT could possibly have violated the Act. Certainly, Complainants have in the past demonstrated the motivation to ask the FEC to investigate and punish those who they believe have violated not only the letter but even the spirit of the FEC regulations. It is very telling, then, that though Complainants clearly strain to establish a violation in the making of the contribution by Children of Israel, they were unable or unwilling to assert any theory whatsoever that would constitute a violation of the Act by SFT.

The failure to name SFT as a respondent and/or assert any facts which, if true, would constitute a violation of the Act by SFT, is not merely a technical mistake. The contents of the Complaint are sworn to and signed in the presence of a notary public as required by 11 C.F.R. 111.4(b)(2). However, because the Complaint names only Children of Israel as respondents, SFT cannot be added as a respondent in this matter. To do so would broaden the Complaint beyond what has been sworn to and signed, which would be impermissible under 11 C.F.R. 111.4(b)(2). The Commission has taken the position that unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. *Id.* In the instant case, no allegations have been made regarding SFT, so there are no allegations to refute and no refutation is necessary. We consequently respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and dismiss it as regards the inclusion of SFT as a respondent.

To do otherwise would be for the FEC to impose, without notice, a new standard for determining whether a contribution is suspect of illegality merely by the fact that it came from an LLC. Commission regulations provide guidance on when a treasurer should suspect that a contribution might be illegal; however, the sole fact that a contribution was made by an LLC has never been an indicator that a contribution is suspect. "The speech rights recognized in *Citizens United* would be hollow if closely held corporations and corporate LLCs were presumed to be straw donors - thus, triggering investigations and potential punishment - each time they made contributions." Statements of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman, MUR 6485, *W Spann, LLC, et al.*, April 1, 2016.

Complainants may have the motivation and resources to hire investigators to comb through government records to seek out any indicia available by which they might conjure a potential violation on which they can file a harassing complaint. That, however, does not mean that FEC regulations or the Act impose such requirements or impute such knowledge to a committee receiving a contribution from an LLC. Even Complainants, not necessarily known among the regulated community for caution when it comes to complaining of violations based on speculative "evidence" or conjecture, acknowledge this fact in that they do not allege a violation on the part of SFT. In this case, SFT followed the Act and regulations in accepting the contribution, and should not have been included as a Respondent by the Commission on its own initiative. Including SFT as a Respondent in itself seeks to impose a new, unannounced standard that is arguably contradictory to the FEC's prior positions, and should be disallowed.

Notwithstanding that the contribution was received prior to publication of the Commissioner's Statements of Reasons in *W Spann, LLC*, SFT did follow the Act and regulations in accepting the contribution. In an overabundance of caution, SFT sought confirmation from the donor on the propriety of the contribution. That initial caution was predicated, however, not on the fact it was an LLC that made the contribution, but that the entity contained within its name the name of a foreign nation. Though certainly the context for the LLC's name could be other than a reference to the modern state of Israel, and notwithstanding that the Commission has in the past refused to find that a recipient had reason to suspect that a contribution suspicious based merely on the foreign-sounding name of a donor (see, e.g., MUR 4530, *Democratic National Committee, John Huang, et al.*, and numerous Statements

of Reasons therein), SFT was mindful of the possibility that certain reform groups or political opponents could use this fact to file a harassing and resource-depleting Complaint on the basis that this was an impermissible contribution from a foreign source. SFT thus acted within the regulations, specifically 11 C.F.R. 103.3(b)(1), to protect itself by confirming with Children of Israel and documenting that the contribution was made from a legitimate LLC from domestically-derived funds. At no time did SFT have any reason to believe that the contribution was made by any person other than Children of Israel, LLC.<sup>1</sup>

Subsequently, SFT became aware of an *allegation* that, though susceptible of multiple interpretations, could be an indicator that the contribution was made through the LLC for purposes of avoiding disclosure of another donor. Having been made aware, SFT then attempted to confirm, again in compliance with 11 C.F.R. 103.3(b)(1), that the contribution was made by the LLC, or in the alternative that the contribution was properly attributed to another so that SFT could amend its reports to identify the correct contributor. SFT received and documented verbal assurance that the contribution was properly reportable as a contribution by Children of Israel, LLC, which existed for legitimate purposes other than for avoiding disclosure of political contributions, and was made from legitimate funds that were the property of the LLC. Having complied with 11 C.F.R. 103.3(b)(1), SFT nonetheless did not stop there but followed up that verbal assurance by sending a letter confirming the conversation and requesting correction if the understanding was inaccurate. As reward for its overabundance of caution in thrice confirming the legitimacy of the contribution, SFT was included as a respondent in this action where even Complainants did not find it appropriate.

SFT has no information other than that the contribution was a contribution properly made from permissible sources by Children of Israel, LLC. SFT has no reason to believe that the contribution was improper. SFT very cautiously complied with its obligations under 11 C.F.R. 103.3(b)(1). As such, the Committee understands that it has no discretion to have done other than it did, in reporting the contribution as having been made by the LLC. Having been informed that the contribution was properly made by and attributed to the LLC, SFT does not have the discretion (or necessary information) to redesignate the LLC contribution as having come from a person other than the LLC. The law requires that SFT report the contribution as from the LLC. To do otherwise would be to improperly report the

<sup>1</sup> It is worth noting that even if SFT had established that the contribution was made through an LLC set up for that purpose, it does not necessarily follow that the contribution was illegal or should not have been reported as a contribution from the LLC. The Commission's position on this issue was not and is not clear, and the Commission should be clear in its guidance before attempting to establish liability on a committee solely by virtue of having received a contribution from an LLC. See commentary from former FEC Commissioner Smith, Bradley A., "*LLCs and Politics at the FEC*", April 12, 2016 <http://www.campaignfreedom.org/2016/04/12/llcs-and-politics-at-the-fec/> ("In past enforcement matters, the FEC has repeatedly held that contributions by closely held corporations were, in fact, corporate contributions, and could not be exempted from the prohibition on corporate contributions on the grounds that the funds originally came from the owner of the closely held corporation, and that the owner retained substantial control of the corporate decision to make the contributions"), citing *FEC v. Kalogianis*, 2007 WL 4247795 (M.D. Fla. 2007) (candidate's closely held corporation loaned money to campaign); *MUR 3191*, *Christmas Farm Inn, Inc.* (1995) (candidate's closely held corporation loaned money to campaign); *MUR 4313* (*Coalition for Good Government*) (2002) (respondent created a corporation for purposes of making an independent expenditure, and deposited personal funds with corporation for that purpose; deemed to be illegal corporate expenditure). See also Smith, Bradley A., "*The FEC, LLCs, and Political Contribution Disclosure*," April 16, 2016 <http://www.campaignfreedom.org/2016/04/16/the-fec-llcs-and-political-contribution-disclosure/>

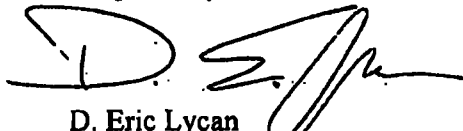
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contribution based solely on the intuition or subjective judgment of the donor's intent by the committee treasurer.

SFT received a contribution from an LLC, which contribution it had no reason to suspect was illegal as having been made in the name of another person. When such allegations were brought to its attention, it took the proper steps to confirm the legality of the contribution. The legality of the contribution was confirmed, and SFT continues to have no reason to believe that the contribution is improper. No allegation otherwise was contained in the Complaint, and as such the Commission can and should find no violation on the part of SFT. To have been included as a Respondent without even so much as an allegation of a violation is improper. SFT should be immediately dismissed as a Respondent.

Thank you for your prompt consideration of this matter, and please do not hesitate to contact me directly at (859) 425-1047 with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Eric Lycan', with a stylized flourish extending to the right.

D. Eric Lycan  
*Counsel and Treasurer for Stand For Truth, Inc.*